

**Before the Federal Communications Commission
Washington, DC 20554**

In the Matter of	:	
	:	
Schools and Libraries Universal	:	CC Docket No. 02-6
Service Support Mechanism	:	

**INITIAL COMMENTS OF THE
COUNCIL OF CHIEF STATE SCHOOL OFFICERS**

G. Thomas Houlihan, Executive Director
One Massachusetts Avenue, N.W., Suite 700
Washington, DC 20001
(202) 326-8688

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I. INTRODUCTION

The Council of Chief State School Officers (CCSSO) respectfully submits its Comments in the above-referenced Notice of Proposed Rulemaking (“*NPRM*”) proceeding. The CCSSO is the organization representing public officials who lead the departments responsible for elementary and secondary education in the states, the United States extra-state jurisdictions, the District of Columbia and the Department of Defense Education activity. It works on behalf of state agencies that serve pre-Kindergarten through 12th grade students throughout the nation to increase student performance.

In developing these Comments concerning the Schools and Libraries Universal Service Support Mechanism (“E-Rate”), CCSSO has relied on the important work of state E-Rate coordinators, some of whom work directly for state departments of education and some of whom are tasked with other statewide technology efforts. These individuals have offered and continue to provide ongoing support for schools in their states to assist them in navigating the E-Rate application process from the beginning, through the acquisition of discounts and/or refunds on their telecommunications and advanced services purchases. These state E-Rate coordinators

have intimate knowledge about the E-Rate program because they help school districts with their E-Rate applications; are responsible for state consortia applications; regularly work with the Universal Service Administrative Company's Schools and Libraries Division ("SLD" or "Administrator"), and have a particularly good grasp of the program's history and intent underlying its development. By necessity, the state E-Rate coordinators have acquired detailed command of the program rules and the Administrator's procedures for processing applications, so that they may knowledgeably and responsibly provide the above-described support services.

The level of ongoing program support that each state may offer varies from state to state, and from year to year, depending upon the availability of state resources to fund these activities. An informal survey of state E-Rate coordinators indicates that states are spending an average of about \$330,000 annually to facilitate their respective school districts' compliance with E-Rate program rules by performing such functions as reviewing and approving technology plans and offering support for school districts throughout the process of preparing and submitting the various E-Rate forms. These Comments reflect the best knowledge available to CCSSO about the E-Rate program and were developed with the principles consistent with the FCC's Orders that establish and implement the schools and libraries universal service provisions of the Telecommunications Act of 1996.

The CCSSO applauds the Federal Communications Commission ("FCC" or "Commission") for its ongoing commitment to expand universal service of telecommunications

services to schools and libraries. As the Commission recognized in its NPRM,¹ the E-Rate Program has successfully spurred telecommunications and Internet connectivity for millions of school children (and library patrons) across the nation, especially so for public and non-public K-12 schools and districts in poor and rural areas. The program's primary focus needs to remain with these constituents, to provide them with the essential financial supplement to enable them complete their network infrastructure and allow on-going maintenance.

We appreciate the opportunity to comment on the specific issues and the general program administration as identified in the *NPRM* so that the Commission and the Administrator can improve the efficiency of the program in ways that improve operation, ensure equitable distribution of program funds and prevent fraud, waste and abuse. In commenting on these important issues, the CCSSO has striven to provide the perspective of the state organizations that we represent and the schools that the state departments of education serve in their respective roles as E-Rate coordinators. We are guided by the following principles relevant to the Telecommunications Act of 1996:

- A. The program should be competitively neutral regarding technology, vendors, and procurement.
- B. The educational interests of the applicants should guide determination of which services are eligible or ineligible.
- C. Where there is conflict between these principles, the outcome should be in the best interests of the applicant.

¹ *In re Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Notice of Proposed Rulemaking and Order, FCC 02-8 (Order released January 25, 2002), ¶3 n.4. The *NPRM* was published in the Federal Register on February 19, 2002, 67 Federal Register 7327.

- D. Schools and libraries should receive support for these services by the simplest, most efficient methods possible.

The CCSSO believes these principles should be guiding factors in any and all decisions related to program improvement. They are principles that simplify administration, ensure equitable distribution of program funds and greatly reduce fraud, waste and abuse. Our recommendations on the various issues identified in the *NPRM* will be informed by these principles, and we urge the FCC to likewise incorporate these principles into its consideration of the various parties' comments and reply comments.

II. SUMMARY OF COMMENTS

Several important changes in the eligible services procedures and classifications should be implemented to reflect current regulatory and marketplace conditions, in order for the E-rate program to keep pace with current technological opportunities and uses. The eligible service procedures, as currently administered, do not enable schools to make competitively-neutral decisions nor do the procedures effectively foster access to more advanced services.

First, telecommunications services should be eligible for discounts to all school buildings that are integral to the shared network of learning. The current policy that restricts telecommunications services discounts to those school buildings with places of instruction cannot be applied fairly, and it ignores the critical role played by administrative facilities in the education process. Centrex and private branch exchange services are eligible for discounts regardless of the actual location or destination of the telephone calls. Yet, those school districts that either do not have Centrex or PBX service available to them or choose not to avail themselves of such service must limit their discounts only to those buildings with classrooms. Similarly, school safety issues are of paramount importance, and telecommunications services that facilitate students' safety should be eligible for discounts. Cell phone service to bus drivers, therefore, should be eligible for discounts.

Second, schools should be permitted to use the facilities and services that they procure for Internet access from telecommunications common carriers and non-common carrier providers for transmitting telecommunications. The current rules limit non-common carriers to providing Internet access and internal connections; applicants are not permitted to obtain telecommunications service from non-common carriers. While this limitation may appear

logical on its face, it has been applied to prohibit schools from using their Internet access service to transmit telecommunications. This prohibition, however, is outdated and does not recognize the distinction between a company's offering of Internet access service that may include the use of telecommunications, and a service provider's offering of telecommunications services. If a customer chooses to use the Internet access facilities to transmit telecommunications, this use—by the customer--should not be construed as the impermissible *offering* of telecommunications service by a non-common carrier.

Third, the eligibility of services should be defined by functionality rather than by the particular service. This approach will maximize competitively-neutral decisionmaking by schools. Nevertheless, if the Commission retains the current eligible services approach, the list should be publicized and made available to applicants and service providers. Moreover, applicants and service providers should have an opportunity to submit requests for eligibility determinations so that they may avoid inadvertent and unknowing violations of program rules by applying for discounts on ineligible services.

Voice mail service should also be classified as an eligible service, to enable schools to use this means of communications in a manner comparable to their current reliance on email. Additional, incidental services on telephone bills such as directory listings, E911 charges and unlisted telephone number charges, should also be deemed eligible, so as to minimize the administrative costs of reviewing applications to assure that these charges have not been included in the request for discounts.

The documentation requirements underlying consortia applications need to be clarified. The CCSSO concurs that it is appropriate to require the lead consortia member who submits an

E-rate application to document that consortia members have adequate resources to make effective use of the discounts. The CCSSO is concerned, however, that the failure of one or more consortia members to submit a letter of agency should not penalize the remaining members through the denial of a request for discounts for all those consortium members that provided a letter of agency. The CCSSO recommends that the letter of participation and letter of agency be combined into one document for each consortium member; that the letter of agency only be required to be obtained when the member joins the consortium, and that the letter of agency be required at the school district, but not the billed entity, level. Letters of agency should be able to be filed electronically, and consortia should be permitted to utilize the weighted average discount methodology when applying for discounts.

The CCSSO has numerous proposals to improve the post-funding commitment process. First, the E-rate rules should be modified to expressly provide the applicant with the choice of utilizing the Billed Entity Reimbursement (“BEAR”) form for obtaining discounts, or obtaining the discounts on invoices issued by service providers. The service providers should not be able to insist that applicants pay 100% of the costs of service and then obtain reimbursement of the discounts. Moreover, an applicant should be permitted to use the BEAR form and then switch to discounts on invoices during the same funding year.

The single biggest improvement in the process for providing discounts to schools would be to allow schools to receive direct assignment from the Administrator of the reimbursement checks due to them after they submit a BEAR form. Current practice prohibits schools from directly receiving reimbursement of the BEAR amount, although the FCC has never clearly articulated the legal basis for this restriction. The CCSSO respectfully submits that no such

limitation exists, and that it would be far more expedient to send the BEAR checks directly to applicants. There should be no compromise of program integrity by instituting this modification because service providers would still be required to confirm on the BEAR form that they provided and were paid for the services for which the applicants seek reimbursement. Moreover, a review of the Commission's prior orders reveals that the discount methodology was developed as a means of administrative convenience to applicants and not due to legal necessity. There simply is no good reason—legal or policy—that compels service providers to be thrust in the role as a clearinghouse or conduit for BEAR reimbursement checks.

The CCSSO supports the Commission's consideration of an effort to disburse discounts to more applicants, particularly those applicants for internal connections discounts with a discount rate that is lower than the historical rate of funding these priority two services. Two proposals are presented for consideration. First, an applicant should limit requests for discounts on internal connections equipment to a particular location (billed entity) to every other year. Maintenance services on internal connections, however, should continue to be eligible for discounts each year. Second, the Commission should consider adjusting the discount matrix to enable more schools to qualify for discounts based on the magnitude of available funds.

The Commission should codify the Alaska waiver petition order to allow excess services to be used by entities other than eligible schools and libraries based on the circumstances that were present in that proceeding. There should be no additional cost to the program and at the same time there should be a wider community benefit arising from the program.

This proceeding also presents an opportunity for the Commission to make needed improvements in the handling of appeals. The deadline for appeals should be permanently

modified to 60 days and the deadline should be based on a postmark, rather than receipt-in-hand requirement. This process would be aligned with the way in which all of the other deadlines are measured by the Administrator. Moreover, successful appeals should be funded immediately, and the funds should come from present year funds. Future year funds should never be used to fund an appeal. If the unlikely situation arises where there are insufficient dollars available to fund an appeal, additional monies should be collected from carriers as an exception to the \$2.25 billion annual cap. Unused funds should not be used as credit against future year contributions, and instead should be carried over and made available for funding future years' applications for discounts.

The CCSSO supports the Commission's efforts to more explicitly articulate the consequences of repeated failure to comply with program rules, and urges the Commission to take steps to enable interested stakeholders to exchange information and provide feedback regarding various participants as a means of self-monitoring. There should not be any requirement, however, that beneficiaries pay for audits that the Administrator may decide to convene. The Administrator and the FCC already have instituted steps to increase its post-commitment auditing activities. It is impossible for schools to budget for this type of unprecedented and unanticipated expenditure.

Last, several proposals for operational improvements are suggested as techniques to increase the applicants' utilization rate of committed funds, so as to reduce the ongoing surplus of unused funds during each program year.

III. ISSUES ADDRESSED IN THESE COMMENTS

A. Application Process

1. Changes To the Eligible Services Process to Improve the Operation and Oversight of the Program.

In Paragraph 9, the Commission describes the process by which eligible services are determined, how the Administrator informs the public of the eligible services and the process by which applicants and service providers can appeal the determinations. In Paragraph 14, the Commission requests comment on the efficiency and fairness of this process for determining the eligibility of particular products and services. There are two particular areas that must be addressed and modified in order to alleviate much of the inherent uncertainty concerning eligible services: (1) the framework by which eligible services decisions are made; and (2) the “Educational Use Policy” established by the Administrator’s Board and as applied by the Administrator. Alleviating that uncertainty, and concomitantly providing more clarity to applicants and service providers alike should go far in improving the operation and oversight of the program.

a) The Current Eligibility Framework Inhibits Competitively-Neutral Procurement Decision-Making.

The current eligibility framework does not result in competitively neutral rules because the rules—not necessarily by design but by practice--greatly favor incumbent, wireline providers over other types of service providers such as wireless providers. Section 254(h)(2) prescribes that “[t]he Commission shall establish *competitively neutral rules* [emphasis added].... to enhance, to the extent technically feasible and economically reasonable, access to advanced

telecommunications and information services for all public and non-profit elementary and secondary school classrooms, health care providers, and libraries; and ...to define the circumstances under which a telecommunications carrier may be required to connect its network to such public institutional telecommunications users.”

The CCSSO understands the need for and importance of assuring that the E-Rate program provides discounts only on eligible services. The problem that has arisen, however, is that schools find it virtually impossible to make competitively neutral procurement decisions based on the current eligibility rules. This process has led to the unfortunate restriction of technology choices for schools as they try to address and resolve their technology access and infrastructure problems. During the last four years, as the SLD and FCC have gained valuable experience from administering E-Rate, the eligible services list has become more specific. This is no doubt a double-edged sword. On the one hand, the more specific the list of eligible services is, the more useful the list may be to provide guidance to applicants and service providers that want to maximize their ability to participate in the program. On the other hand, however, the list has clearly identified technology choices whose eligibility status is conditional and therefore may pose a dubious choice that may prove fatal to the ability of the school to obtain E-Rate discounts. Consequently, schools have been forced to choose technological solutions that are not as cost effective or current, in order to assure that they meet the guidelines of the program.

For example, in order to maximize the possibility of obtaining funding for discounts, leasing technological solutions from a telecommunications common carrier service provider offers the greatest assurance that the service will be eligible for discount as a priority one telecommunications service. Developing a wireless solution by leasing similar services from a

wireless service provider that does not meet the “common carrier” test virtually guarantees that the school will not qualify for discounts *unless* the services are shown to be exclusively for Internet access and are the most cost-effective means of Internet access. Therefore, leasing wireline services (which inherently include the leasing of facilities owned by the service provider) from a telecommunications common carrier, while potentially more expensive over the longer term, is a solution that is becoming more frequently employed because the E-Rate program discounts that solution.

The eligibility of services for E-Rate discounts should not be driven by whether the provider of the service is a telecommunications common carrier. While an applicant could certainly contract with such a provider to obtain the necessary circuit, router, and CSU as a packaged service, the solution allowed by the E-Rate should be the most cost effective for the applicant.

Those service providers that offer telecommunications services on a common carriage basis should not fear this proposal. A local Internet service provider offering premise services to an applicant will ultimately purchase the bandwidth from the common carrier community in most locations, because they are the primary providers of these services. In locations where they are not, local competition should drive the market, not E-Rate program rules.

If the Commission is serious about competition and driving technological improvements, then the rules should promote rather than limit this activity. To do otherwise would be analogous to the federal government specifying automobiles could only be purchased by schools and libraries from stables and wagon-makers. Technology is changing and the common carriage

preference built into the program rules inhibits the growth and use of advanced information services in our schools and libraries.

Indeed, the Commission recently tentatively concluded that wireline broadband access to the Internet, when offered by a telecommunications service provider, constitutes the use of, rather than the provision of, telecommunications, and is classified as an information service. *In re Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33; *Universal Service Obligations of Broadband Providers, Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review-Review of Computer III and ONA Safeguards and Requirements*, CC Docket Nos. 95-10, 98-10, Notice of Proposed Rulemaking, FCC02-42 (released February 15, 2002)(“*Wireline Broadband Internet Access NPRM*”), ¶25. Clearly, simply because a service may be offered by a telecommunications service provider does not mean that the particular service in question is a telecommunications service. Rather the service may be an information service that happens to be offered by a company that provides telecommunications common carrier services. Likewise, simply because a non-traditional service provider offers a telecommunications service should *not* negate the E-Rate eligibility of the service.

As the Commission recognized in declaring that the Iowa Communications Network is a telecommunications common carrier that is eligible to receive direct reimbursement for the provision of telecommunications services to schools, such a determination is necessarily very fact-intensive. The common carrier analysis requires “a close examination of the facts surrounding [the carrier] and its customer base, for ‘whether an entity in a given case is a common carrier or private carrier depends on the particular practice under surveillance.’ ” *In re*

Federal-State Joint Board on Universal Service, CC Docket No. 96-45, AAD/USB File No. 98-37, Order on Remand (Released December 26, 2000), FCC00-449, ¶9, *quoting Southwestern Bell Telephone Co. v. FCC*, 19 F.3d 1475, 1481 (D.C. Cir. 1994). These types of fact-intensive analyses are time-consuming, costly and inefficient. Moreover, CCSSO submits that they are unnecessary.

In order to maximize the competitive neutrality of the E-Rate program and streamline the Administrator's review of eligible services, CCSSO recommends that the E-Rate rules be amended to prescribe that telecommunications providers that are not common carriers may provide information services such as Internet access to eligible applicants, and applicants may use those same facilities to transmit telecommunications. This proposal is consistent with the Commission's framework in the *Wireline Broadband Internet Access NPRM*. The permissible distinction should be drawn between a service provider's provision of Internet access services to an applicant, and the applicant's use of those same facilities for telecommunications. The applicant should be permitted to use telecommunications over the same facilities that it has leased from a provider of Internet access, without jeopardizing the eligibility of the service provider to receive discounts for Internet access service.

This framework satisfies the existing legal requirements that only telecommunications common carriers may receive direct reimbursement for the provision of telecommunications services. At the same time, the framework encourages competitive neutrality in the schools' procurement of cost-effective Internet access, and enables them to use the same facilities to transmit telecommunications without incurring the risk that discounts will be denied on their Internet access costs.

b) The Educational Use Policy Statement Adopted by the Predecessor to the Universal Service Administrative Company is too Narrow and Legally Unnecessary.

In order for school districts to meet educational needs, it is important for the Commission and the Universal Service Administrative Company (“USAC”) Board to re-think and revise the Educational Policy as it currently stands. In particular, this policy creates artificial and bureaucratic barriers to enable schools to obtain discounts on services that are integral to their technology plans, and does not take into account important educational issues, such as safety.

It is beyond dispute that the purpose of E-Rate is to bring connectivity to the classroom. In this regard, it is important to guarantee that this will happen. In the original Schools and Libraries Corporation Board of Directors November 20, 1997 policy statement (“Policy”) regarding the “educational purpose” of the program, the then administrator’s Board of Directors attempted to assure that funds did not become support for educational administration. However, in the process, this policy has created more access barriers, particularly to smaller school districts with limited service choice.

The Policy states that services “at locations that do not host places of instruction ...are not eligible for support.” While this may address some concerns that larger districts with many administrative buildings and services would utilize too much of the fund, the effect has been that smaller districts, particularly rural districts with few technology staff, if any, are finding the rules administratively burdensome. Typically, the school district’s monthly bill for telecommunications services will bundle together all locations and all access lines. School district personnel and resources necessarily must then review and allocate each bill among eligible locations—locations that host places of instruction—and ineligible locations—locations

that do not host places of instruction. The level of sophistication required to decipher the school district's phone bills and determine which phone lines are eligible requires more energy than the program may be worth to such a district.

This level of required allocation is perplexing especially when program rules allow a district to discount every phone line if they are all connected and can be accessed as extensions, but do not allow them to be discounted if they are individual phone lines. For example, telecommunications services such as Centrex and Private Branch Exchange ("PBX") are eligible for discounts, without regard for the location of the destination of the telecommunications traffic to a building that hosts places of instruction. In many cases, these services may not be options readily available to smaller districts. As a result, a portion of the E-Rate applicant population most in need of the program, those in remote, rural areas, is frustrated, discouraged, and trapped by program rules.

Further, the Policy is so restrictive that it precludes discounts on eligible services relating to school security matters unless those eligible services are provided in locations that host places of instruction. A significant component of a school's educational purpose, that being the safety of its students throughout the course of a student's day from the time the student climbs into a school bus until the time the student departs the school bus in the afternoon, is excluded from discount unless a direct nexus can be made to a location that hosts places of instruction. Providing a safe learning environment has become a more pre-eminent school concern in light of the events in Lakewood, CO; Pearl, MS; West Paducah, KY; Jonesboro, AR; Edinboro, PA; Springfield, OR; and the events that transpired on September 11, 2001. The report *Every Child Learning: Safe and Supportive Schools* produced by the Learning First Alliance, a permanent

partnership of leading education organizations, states in its executive summary that “while schools must rightly focus their attention on standards and high achievement, they will not be able to meet the goal of increasing student achievement without providing a safe, supportive community in which their students can learn.” (*Every Child Learning*, page 1).

The FCC certainly has already recognized the integral role of E-Rate to assure school safety. In the *First Report and Order*, CC Docket No. 96-45, FCC 97-157 (Order released May 8, 1997) the Commission stated:

We see no reason for limiting the nature of telecommunications services that are covered under section 254(h)(1)(B) *or the role they play in operations of the institution*. Eligible schools and libraries are equally free to obtain support under section 254(h)(1)(B) for plain old telephone services lines to enable teachers to receive calls in the classroom, ISDN services that connect classroom and library computers with information services, private lines for connecting two school libraries to each other, or paging services *to enable school security officials promptly to respond to hallway disturbances.*”

Id. at ¶ 432, n. 1117. Yet, the educational use Policy would arbitrarily restrict the funding of safety-related telecommunications services to buildings where places of instruction are located.

The safety of school students is an important part of creating the educational experience. Whether the child is on a bus or a playground, the school is responsible to assure the child’s safety. Cell phone service to bus drivers and paging services to security officers employed by the school are becoming more relevant every day to ensure the safety of the children.

The educational use Policy is not compelled by statute and is even narrower than the FCC’s present rules governing the use of services for educational purposes. Section

254(h)(1)(B) does not require that discounts be restricted to services provided to buildings that host places of instruction. Rather, as the FCC has already found:

Section 254(h)(1)(B) provides that eligible schools and libraries shall receive discounts on certain services for educational purposes. Pursuant to the Commission's discretion to implement the statute, the Commission narrowly constructed its rule to require schools and libraries to certify that they use such discounted services solely for *educational purposes*. This rule supports the Commission's efforts to guard against fraud, waste and abuse.

In re Federal-State Joint Board on Universal Service, Petition of the State of Alaska for Waiver for the Utilization of Schools and Libraries Internet Point-of-Presence in Rural Remote Alaska Villages Where No Local Access Exists and Request for Declaratory Ruling, CC Docket No. 96-45, Order, FCC01-350 (Released December 3, 2001), ¶8 (footnotes omitted). In that proceeding, the FCC granted a waiver of its rule at 47 C.F.R. §54.505(b)(2)(ii) to allow Alaska to use unused satellite telecommunications services for Internet connections for other than educational purposes.

A waiver of the FCC's rules is not required, however, to grant CCSSO's request. Rather, the FCC should clarify that the educational use Policy does not preclude the funding of discounts on telecommunications services that are integrally related to the school's primary mission of providing instruction to students, which shall include assuring the safety of students. The FCC should further clarify that funding of discounts is permissible for school bus driver cell phones and security officials, and to administrative buildings that are integrally related to the school's primary mission of providing instruction to students.

2. While continuing to have competitive-neutrality concerns about maintaining a list of eligible services, any such list should be publicized and service providers and applicants should be able to routinely seek advance eligibility determinations for services and facilities not identified on the list.

While it has reservations about the feasibility of maintaining a competitively neutral list of eligible services, as explained above, CCSSO believes the current internal eligibility list used by the Administrator should be made public. As described above, CCSSO believes that functionality should be the most important principle governing the eligibility of services and products. We do not favor a specific list of approved products because specific products can be used for a variety of functions, some of which are eligible and some not. This has led to tremendous confusion among E-Rate applicants who, even when referencing the current eligible services list or being told by a service provider that a particular item is eligible, cannot discern for themselves whether the item in question is eligible due to issues of functionality and scope.

The CCSSO, however, recognizes that the Administrator already utilizes a list of more than 750 eligible items and services during the application review process as a result of General Accounting Office recommended improvements. (*Schools and Libraries Program: Application and Invoice Review Procedures Need Strengthening*, GAO 01-105, Page 19) The list is not comprehensive due to the rapid proliferation of new products and services for each acknowledged function. However, we understand that the list potentially addresses the great majority of items that applicants currently use. It is identified by at least product brand, number and utilization. CCSSO understands that this list is not shared with applicants in order to assure that there is no competitive advantage over products that are unknown, new or are offered by smaller providers that are infrequently used.

CCSSO appreciates the Administrator's and the Commission's interest in maintaining competitive neutrality by keeping the list private. However, the ultimate outcome has been increased program costs associated with program review. As long as the E-Rate program continues to be based on individual products rather than functionality, such a list should be made public with certain allowances:

- ◆ The eligible services list should not be restrictive, that is, all inclusive, since that would violate the program tenet of competitive neutrality. Applicants should be able to use the list when completing the application process as an alternative to the Item 21 attachments. This also should reduce the number of calls the Administrator's subcontractor has to make to verify information applicants send to support their application.
- ◆ Applicants and service providers should be given the opportunity to submit technologies to the Administrator for approval and inclusion on the product list. This should be done in two specific ways:
 - E-Mail Connection & Template: A submission easily could be accomplished through an e-mail connection to the list. The Administrator could publish a template that defines the elements necessary for determining a product's eligibility. An applicant or provider could complete the template and submit it for product approval. The review and approval process should not exceed 10 business days for determination once the request has been made. The Commission often has acknowledged that telecommunications services are frequently improving. It is important to allow an applicant the opportunity to use these improved services and simplify the applicant's ability to choose appropriate products.
 - During the Application Process: For an applicant that discovers a new technology that can better fit its technology needs, the Application Form could provide an indicator that can be checked so that the Administrator knows the technology being proposed is not on the approved list. In this case, the applicant would attach the appropriate supporting documentation in the template defined above and submit the documentation as an Item 21 attachment to the Administrator for review and approval.

3. The Commission Should Reconsider Or Modify The Current Selection Of Products And Services Eligible For Support In The E-Rate Program Regarding Wide Area Networks, Wireless Services And Voice Mail.

The CCSSO recommends several policy changes that would improve the service selection mechanism:

First, as explained above at Section III. A.1.a, the definition of telecommunications service should be modified to reflect the distinction between a service provider's offering of telecommunications, which may only be undertaken by a common carrier, and a school's use of facilities that are leased for Internet access, but may also be used by the school to transmit telecommunications. A school's use of Internet access facilities, provided by a non-common carrier, to transmit telecommunications should be permissible. The current policy, that would deny discounts on the basis that the telecommunications service is provided by a non-common carrier, should be updated to reflect the difference between the school's use of telecommunications and the service provider's offering of telecommunications services.

Second, and a logical consequence to the first recommendation, the Commission's policy on leasing Wide Area Networks ("WANs") should be revised to reflect that non-common carriers may lease WANs to schools for cost-effective Internet access, and at the same time, the school's use of those facilities to transmit telecommunications should not render the service ineligible.

Third, reflecting the importance of voice mail for a means of communications that is comparable to e-mail, and in recognition of the relatively modest cost of this service, the Commission should deem voice mail as an eligible service for E-Rate discounts.

a) Wide Area Networks.

Wide Area Networks (“WANs”) are used by school districts as an essential communications connectivity model between and among eligible entities in a shared network of services. Through this connectivity, school district costs are reduced because resource sharing becomes more cost effective. For example, software and other teaching tools can be shared among schools to standardize the educational experience children receive. Also, by using the Internet throughout a rural or poorer district, WANs provide a 21st Century equity. Resources are made available, such as the latest periodicals and other information sources that these districts cannot otherwise afford to access. Finally, as children become more proficient in using technology, we are seeing instances of digital portfolios that can follow children from school to school. These might be a series of projects produced by the child, or longitudinal learning that occurs from grade level to grade level. As these tools become more prominent in furthering a child’s education, WANs become more necessary.

Why do state educational organizations and schools care about WANs? In most instances, it is the most efficient way to deliver services throughout a district or community. Centralized use of software and communication among schools for educational purposes all contribute to a better-managed and more successful district or community. Therefore, the demand for WANs strongly exists.

The current policy is anti-competitive because, with the exception of exclusive Internet use, only telecommunications carriers can offer WAN services to applicants and only in a leasing arrangement. Despite the efforts of the Commission, and the stated intent of the Telecommunications Act of 1996, many schools have not observed an increase and in fact have

observed decline in the number of local telecommunications service providers in their areas, rather than the anticipated increase in service providers. This is particularly true in rural areas, where the incumbent service provider often remains exempt from interconnection obligations with other local service providers. If there is to be any competition for advanced telecommunications services, service providers other than telecommunications carriers will have to provide it.

Further compounding the problem, the incumbent service provider may or may not offer the type and quality of services that the school district is seeking. The current policy is unfair because it holds applicants hostage to the abilities and service offerings of their respective telecommunications carriers. If the predominant telecommunications carrier cannot offer the applicant a leased WAN of sufficient capacity, the applicant has no option but to remain unconnected or underconnected.

This inequity can be resolved fairly and legally without the existing framework of the Telecommunications Act of 1996. The leasing of a WAN for Internet access service should continue to be eligible for discounts, even if the school chooses to use the WAN facilities to transmit telecommunications. Implementing these recommendations will improve the efficient use of program funds because applicants will be able to utilize the most cost-effective alternative available, not simply the most discountable alternative. This policy modification should not significantly increase demand on the fund because that demand already is occurring as applicants and service providers have become familiar with the *Tennessee* and *Brooklyn* Decisions.

Finally, these recommendations will provide effective oversight to prevent waste, fraud and abuse because applicants will be able to apply for the most cost-effective solution to their needs, not what is most likely to be discounted.

b) Wireless Service.

Wireless solutions often are used by rural schools and libraries for whom wireline technology is not an adequate solution and by older schools and libraries with asbestos concerns. However, the current Priority 1 and Priority 2 distinction causes most cost-effective wireless solutions to suffer from the same discrimination identified in the WAN discussion above. Further, for those schools and libraries that have no wireline solution offered on a common carriage basis, they would have be eligible to apply for E-Rate funds to use the wireless WAN as a means of obtaining Internet access and for their own transmission of telecommunications service. This would broaden the pool of applicants to include some who have never applied previously.

c) Voice Mail.

The Commission notes at Paragraph 18 of the *NPRM* that “[t]he increasing need for, and prevalence of, voice mail as a way of communicating with school and library staff for educational purposes raises the issue of whether voice mail, which serves a similar purpose as email...should also be eligible.” The CCSSO appreciates the Commission’s recognition of the important role that voice mail holds as part of the continuum of service for students, parents and patrons. CCSSO agrees with the Commission that allowing voice mail as an eligible service would improve the operation of the program. It is burdensome on the applicant to break out voice mail charges as a component of a basic phone bill, and it is burdensome on the

Administrator to verify that voice mail has not been included in the discount request, particularly given the relatively modest costs associated with voice mail. In reviewing various basic phone bills of school districts from across the nation, approximately 2% or less of those bills can be attributed to the cost of voice mail. The costs associated with review by both the applicant complying with the policy and the Administrator in verifying compliance with the policy is a greater cost.

d) Other Services.

There are two additional eligible service issues that should be addressed as part of the Commission's disposition of this *NPRM*:

(1) Additional Services On The Basic Phone Bill.

It is important to note that the inefficiencies associated with reviewing an application to assure that voice mail is not included in the discount request also applies to a number of other services listed on a basic phone bill; including E911 service, directory listings and unlisted phone numbers. The current eligible services list located on the Administrator website at <http://www.sl.universalservice.org/reference/eligible.asp> specifies components that are eligible for discount. For administrative efficiency, it also is valuable to consider allowing these expenses as well. The cost of administering the program still must outweigh the additional costs of these services, which, in most cases we reviewed, were less than 1% of the basic telephone bill.

The current administrative process requires program integrity reviewers to spend additional time examining the details of each basic phone bill for eligible and ineligible line items. We expect the cumulative cost of each reviewer's time, which could be better spent

addressing important program integrity issues, is significantly more than the cost of the services for which the review is now required.

In particular, in most school districts, E911 access is a required element of any safety plan. This is different from the situation in 1996 when the Commission determined E911 to be ineligible. We strongly urge the Commission to include E911 services as eligible discounted services.

(2) Internet 2.

In addition, CCSSO respectfully submits another significant service that requires more discussion; that is the use of Internet2 (“I2”) as an educational solution. It is helpful to understand why I2 is valuable and important to schools and libraries. Schools and public libraries (as well as community colleges, museums, hospitals, and others) can have access to Internet2 under the I2 – K20 Initiative. The design of the Internet2–K20 Initiative fosters routine collaboration on instructional, clinical and/or research projects, services and content with Internet2 members or with other sponsored participants. The Internet2-K20 initiative is not about high bandwidth; it is about using high bandwidth to provide a better educational experience through collaboration among educational institutions.

4. The Commission’s Current Policy for Handling Internet Access When Bundled with Content is Appropriate.

At Paragraphs 19-21 of the *NPRM*, the Commission requests guidance on the current policies regarding Internet Access when bundled with content. The CCSSO believes the current policy of the Commission is appropriate, especially with the recommendations made above

regarding the definition of Priority 1 and Priority 2 services. We are concerned that changes to this policy will lead to increased waste, fraud, abuse and additional administrative difficulties.

5. The Commission Should Retain The Administrator's Policy Of Utilizing A 30% Benchmark When Reviewing Funding Requests That Include Both Eligible And Ineligible Services.

At Paragraphs 22 and 23 of the *NPRM*, the Commission requests guidance on the current application review policy, its benefits and burdens and possible alternatives. The CCSSO believes that as long as the E-Rate program continues to be item-specific and conditional on certain uses, instead of being based on functionality, it is difficult for applicants to always discern what is and is not eligible. As such, the 30% benchmark policy has worked to decrease the administrative burden of reviewing applications and has offered some basic guidelines with which applicants are now familiar. The CCSSO believes this benchmark should be utilized unless and until the underlying structure of the eligibility process is changed.

6. The Commission Should Modify its Rules Regarding Consortia to Increase Consistency and Fairness in the Program.

a) The Proposed Rule Applicable to Consortia Should Be Further Amended.

At Paragraphs 26-28 of the *NPRM*, the Commission requests guidance on clarifying that only ineligible private sector members seeking services as part of a consortium with eligible members are prohibited from obtaining below-tariffed rates from providers that offer tariffed services. To accomplish this, the Commission recommends adding a clarifying phrase to 47 C.F.R. 54.501(d)(1). The Commission also requests comment on whether this rule would increase or decrease administrative costs, and whether costs would outweigh the benefits of the change.

CCSSO commends the Commission on its decision to clarify this portion of the regulations and supports the change as it relates to tariffed interstate services. We agree with the Commission's proposed rule change as it relates to other eligible entities; however, we submit that the proposed list of consortia-eligible non-profit entities is by no means comprehensive. In short, as we believe the Commission intends, the proposed rule should accurately describe who is eligible to receive interstate services at tariffed or below tariffed rates based on federal regulation, but should clearly refrain from determining who is eligible to participate in consortia for purposes of intra-state, non-tariffed or other competitive services that are based on state or local rules and regulations. Moreover, the proposed rule should not apply at all to providers of interstate telecommunications services that are not required to publish their rates or prices in interstate tariffs. To assure this clear distinction, we offer the following adjustments to the proposed rule. Additional changes are underlined.

For the purposes of seeking competitive bids for interstate telecommunications services, schools and libraries eligible for support under this subpart may form consortia with other customers. When ordering interstate telecommunications services that are subject to interstate tariffs under this subpart, the consortium may even seek to negotiate for pre-discount prices below tariffed interstate rates on behalf of members that are eligible schools or libraries, health care providers eligible under subpart G, or public sector (governmental) entities, including, but not limited to, state colleges and state universities or other non-profit educational entities, state educational broadcasters, counties and municipalities. However, while eligible entities and enumerated governmental agencies in a consortium may benefit from the consortium's negotiated rates, ineligible private sector entities in that consortium may not so benefit but must instead pay no less than the pre-discounted tariffed rates for interstate telecommunications services where such tariffs govern the prices applicable to interstate telecommunications services.

The CCSSO believes that many of the same reasons for promoting consortia as articulated in the *First Report and Order* are still relevant today. Bulk consortia purchasing lowers unit costs to all members, thereby lowering overall costs to the program. Also, diverse

consortia membership and their market strength has led to important infrastructure investments in sparsely populated rural areas and other formerly neglected areas. Clearly consortia and their cost-savings have served an important role in bringing technology to schools and libraries, spurring infrastructure investments, and lowering unit costs to the E-Rate program overall.

Currently, the Administrator has published program guidance that clearly define eligible entities for purposes of receiving E-Rate discounts and ineligible entities. We agree with these and submit that consortia have used these guidelines in determining the appropriate allocation of E-Rate eligible costs between consortia members. We appreciate the Commission's interest in further clarifying program rules to assure that the delineations of the program do not inhibit the development of cost-saving, innovative consortia arrangements.

Finally, we submit that the Commission's revised proposed rule should not apply to any telecommunications services deemed competitive, or where no interstate tariffs exist. Also, there should be nothing that precludes diverse consortia to form when purchasing competitive, non-telecommunications services where market-driven prices determine costs. This will allow consortia to continue to form and procure services based on state or local initiatives and directives. While any consortia will need to follow E-Rate program rules on the appropriate allocation of costs between program-eligible and program-ineligible entities, we believe that consortia should be free to form and procure services based on their own state and local rules and regulations.

b) Other Consortia Issues.

The Commission has asked for proposals on how to clarify, change or reorganize other rules and requirements relating to consortia. *NPRM* at ¶32. Initially, and as an advance notice to

consortia and the SLD as Administrator alike, we ask that the Commission initiate any modifications to the consortia rules and requirements no earlier than the Year 6 (July 1, 2003 – June 30, 2004) Funding Year. It is essential that all interested stakeholders, including applicants, service providers and the SLD as fund administrator, have sufficient planning time to develop procedures to implement any new rules.

The Commission recognized early on that encouraging consortia is a benefit to the Program. Nevertheless, in its May 7, 1997 *First Report and Order* at ¶¶476, 483, the Commission also recognized the potential concerns in bringing together consortia. The Commission was concerned with cost-allocation issues and possible abuse of resale prohibitions in program rules. As a group that includes some of the largest educational consortia in the program, we concur with the FCC in their efforts to assure that costs are properly allocated and that only eligible entities receive discounts.

Notwithstanding these concerns, the FCC was very clear in stating that the benefits of consortia outweigh the dangers. We agree. Moreover, if we look at the technical, financial, institutional and educational content benefits of consortia, the benefits clearly weigh in favor of encouraging consortia. If the Congressional intent was to assure that schools and libraries would have access to modern telecommunications services, then consortia have served the intent very well. Not only have they reduced costs to schools, libraries, and to the Program, by aggregating demand and reducing unit costs, but they also have played a major role in the important *content* side by bringing together educational content for use by all participants. While we reiterate that content is not the focus of the Program, in effect, access to modern telecommunications services

without content is like a car without roads or a destination – a technological marvel with no place to go.

In retrospect, the Commission should also recognize that consortia have also assisted schools in addressing some of the financial and operational issues they may have with their Internet service providers (“ISPs”). In many States, consortia have been used by eligible entities as their “Internet access carrier of last resort” when their incumbent carrier abruptly ceased operations. In short, the benefits of consortia -- intended and otherwise -- are even more evident now than back in 1997.

The question here is how to balance the efforts to encourage the formation of consortia and their clear (and growing) program benefits with the need to prevent waste, fraud and abuse, and excessive legal and administrative burdens on consortia and the SLD alike.

The primary issue that has emerged regarding consortia applications relates to the Administrator’s requirement that the E-Rate applicant that files an application for discounts on behalf of a consortia must produce Letters of Agency (“LOA”) from each of its members expressly authorizing the consortium leader to submit an application on its behalf. *See, e.g., In re Request for Review of the Decision of the Universal Service Administrative Company by Project Interconnect, Brooklyn Park, Minnesota*, Files No. SLD-146858, 146854, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, DA01-1620, *Order* (Released July 11, 2001) at ¶8 (“*Brooklyn Park Appeal*”); *In re Request for Review of the Decision of the Universal Service Administrative Company by Clackamas Education Service District, Marylhurst, Oregon*, File No. SLD-147541, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Order* (Released September 27, 2001) at ¶7. In each of the cited appeal decisions, the FCC

upheld the Administrator's authority to require that the E-Rate applicant produce a LOA from each member of the consortia, to confirm that the certification on Form 471 is accurate. The Form 471 certification requires the applicant to certify that each of the entities it represents have secured access to adequate resources to make effective use of the discounts.

The Commission made clear in these two appeal decisions that the Administrator is justified in denying discounts to any of the consortia members for which the E-Rate applicant does not produce a LOA. An outright denial of the whole application, however, is not warranted unless there is evidence of bad faith by the E-Rate applicant in putting forward the application. *Brooklyn Park Appeal*, ¶14. Since the E-Rate applicant had received letters of participation (as compared to LOAs) from each of the consortium members, the FCC found that there was no evidence of bad faith.

Relying on the guidance and framework of the *Brooklyn Park Appeal*, our comments below are offered in a similar spirit of cooperation and balance.

- ◆ Letters of Agency (LOA)/Consortia Participation Agreements (CPA): The FCC should allow individual consortia to frame and merge their Program-specific letters of agency ("LOA") and any accompanying consortia-specific state and/or local language to be created, filed and treated as a single omnibus agreement. The combined Letter of Agency/Consortia Participation Agreement (CPA/NPA) would cover both E-Rate specific and any state/local requirements that may be necessary to assure legal participation in the consortia. Allowing this merging permits consortia to customize their Agreements, and reduce paperwork and administrative burdens on all parties in the process.
- ◆ Letters of Agency: We believe that a requirement for LOAs from consortia members is important to confirm that consortia members know that the consortia lead is applying for E-Rate services on their behalf, and likewise to confirm that consortium members have adequate resources to effectively use the discounts. As such, they must understand that they may be part of any E-Rate audit process for consortia applications. The FCC should not, however, use the LOA as a punitive document for the purposes of denying all members of an eligible consortia their appropriate share of eligible monies, if it is clear

that the entity is receiving services. In effect, any failure to submit an LOA by any single entity or entity members should not jeopardize funding for the entire application. Only those members who failed to submit a LOA and in actuality are not receiving the services covered in the consortia's E-Rate application should be denied funding.

- ◆ LOA – Term of Force and Effect: The LOA or merged LOA/CPA should remain in force for however long the member is part of the consortia. There should not be an annual update requirement unless there is a significant, substantive change in the relationship between the consortia and the eligible entity. The administrative burden of requiring a repetitive filing every year places a heavy burden on consortia, eligible entities and the Administrator, and does not accomplish any substantive goal. An LOA may be drafted to contain the express requirement that the consortia member must notify the consortia lead if circumstances change such that the member does not have adequate resources to make effective use of the E-Rate discounts.
- ◆ Appropriate Administrative Level for the Filing of the LOA: Another important issue is the question of which entity must execute a LOA. The primary example is K-12 public schools. In the case of public schools, the LOA should be valid at the District level, especially since the District already serves as the legal, administrative and fiduciary representative for all of its schools. To require the LOA down to the school level would, again, engender an enormous paper burden for consortia members. If, as in the case of many non-public schools and local libraries, the entity is a member on its own, then, clearly, an LOA at the individual school or library level would be appropriate.
- ◆ Ability to Record and File LOAs Electronically: Finally, we submit that the LOA should be allowed to be filed and stored electronically by the consortia, so long as any state or local laws do not prevent such an arrangement. The FCC should not place any additional burdens on the format in which the filing occurs.
- ◆ Discount Calculation: Currently, consortia applicants are denied the opportunity to use of a weighted average to calculate overall discounts. We believe it is unfair, discourages formation of consortia, and forces an undue burden on applicants. In contrast, school districts can calculate the shared discount level using a weighted average of their member schools. Consortia are left with two options, using a simple average of each entity (including districts) or individually using a simple average of each member school. The former process is unfair for consortia in that a small district of 150 students is weighted the same as a district of 400,000 children, while the consortia resources needed to serve both entities are clearly different. The latter process of individually listing entities forces consortia to list every school individually, creating huge applications. Allowing weighted average options of districts allows consortia to simplify the application process and puts them on par with other applicant classes.

The FCC should recognize that consortia are, by their nature, fluid entities whose individual members come and go as best suits their needs, but whose benefits are clearly

growing. Many of our consortia members have seen rapid growth in their memberships, as entities renegotiate their Internet Access arrangement, or just as often, as their ISPs cease operations. From an application and administrative standpoint, the FCC needs to realize that the program application process forces us to take a “snapshot” of a constantly moving picture.

We fully recognize that consortia should maintain their administrative duties to monitor usage by eligible entities, and properly allocate costs; however, in its deliberations, we urge the Commission to recognize the challenges that come with having to take “snapshots” of the membership months (and in some cases years) in advance to comply with application deadlines. We believe taking the simple steps outlined above will go a long way in both encouraging consortia as intended in the *First Report and Order*, while satisfying the need to prevent waste, fraud and abuse, and excessive legal and administrative burdens on all the parties involved.

B. Post Commitment Program Administration.

1. The Commission Should Specify That Service Providers Must Offer Applicants The Option Of Discounts on Invoices Or Completing A Billed Entity Applicant Reimbursement (“BEAR”) Form.

At Paragraphs 30-31 of the *NPRM*, the Commission requests comment on whether program rules should clarify that applicants should have the option of a discount or completing a BEAR Form. The CCSSO strongly urges the Commission to specify this choice in program rules. As the Commission recognizes, there are instances where applicants are being forced into payment arrangements that are burdensome and difficult for them. In addition, often applicants face the problem of delayed payment using the BEAR Form process. Sometimes this occurs even when the applicant has confirmed that the service provider has received the check from the

Administrator. The BEAR form was developed as a means of accommodating those situations where applicants *voluntarily* had already fully paid for services that are eligible for discounts. Service providers should not be permitted to compel applicants to undertake this responsibility as a means of avoiding the provision of discounts on invoices.

a) Applicants Should Have Maximum Choice To Assure Administrative Ease.

The CCSSO believes the choice should be available for each payment necessary for the provided service. In this regard, the applicant should have the following choices of payment: 1) discounts on services; 2) reimbursement through the BEAR process; and 3) a combination of discounts and BEARs for each bill. Currently applicants can utilize discounts or BEARs. However, program practice dictates that once an applicant chooses either discounts or BEARs, it does not have the option of changing. This has caused some hardship for smaller applicants and service providers that can be mitigated by permitting applicants and service providers more flexibility to make appropriate arrangements for discounts.

For example, smaller providers are not always able to implement a billing system to accommodate discounts during the first quarter of a funding year and may encourage an applicant to select the BEAR form choice for the first quarter of the E-Rate program year. However, during the following quarters these providers may be able to provide discounts on bills that may be more cost effective for both the applicant and the provider. The applicant should be permitted to work with the provider to use this combination of payment that is mutually beneficial to both the applicant and the provider.

b) Additional Process Improvements.

While CCSSO appreciates the effort the Administrator has committed to developing and managing the BEAR process, we submit that it is still very burdensome and unreliable for applicants. This results in significant staff time for applicants, the Administrator and, we suspect, providers, to make this process work.

To address these issues, the CCSSO recommends an additional programmatic change that will reduce these administrative issues and provide a streamlined process for applicants and service providers. This change would allow service providers to assign in advance BEAR payments directly to the applicant rather than the current two-step process of payment to the service provider who, in turn, pays the applicant. This could be done through the current BEAR process where the applicant and the service provider must both sign the BEAR form. An additional section on the BEAR form could be added to facilitate the process.

As identified in the *NPRM* at paragraph 31, in certain cases, service providers have failed to remit the payments that they received from the Administrator that are due to applicants until well past the currently prescribed 10-day limit. The option of direct assignment also would reduce these occurrences and would decrease the need for enforcement measures related to BEAR payment remittals.

This is important because the Administrator has had to address these issues on an *ad hoc* basis and utilize a “Good Samaritan” policy to meet the needs of some applicants who have received a funding commitment, in good faith and completed the reimbursement process. Unfortunately, however, after the Administrator remitted the BEAR reimbursement check to the service provider, the applicant and/or Administrator has discovered that the service provider has

gone out of business or entered bankruptcy. The Good Samaritan policy relies on using a vendor that is in good standing with the program as the conduit through which a BEAR reimbursement check will be remitted and the vendor will then remit payment to the E-Rate applicant. This policy is utilized to avoid sending the BEAR check directly to the applicant.

Still others complete this entire process and when the provider goes out of business or enters bankruptcy with their reimbursement check in hand, there is no resolution within the E-Rate program. All of these unfortunate situations consume valuable time and effort by both applicants and the Administrator.

2. The Commission Should Incorporate Enforcement Measures For BEAR Remittals After The Due Date for Submitting the Reimbursements to the Applicants.

At paragraphs 35 and 36 of the *NPRM*, the Commission requests comment regarding the development of enforcement measures to assure applicants receive BEAR payments from providers; the advisability of extending the remittal process to 20 days and the potential significant economic burden on small entity providers. The CCSSO strongly supports the establishment of BEAR payment enforcement measures within the E-Rate program rules, in addition to relying on the Commission's fines and forfeitures authority pursuant to 47 U.S.C. §503. The Commission should also continue to pursue other law enforcement actions when payment has not been made in a timely manner.

It must be emphasized that the BEAR form was developed as a means of addressing those situations where E-Rate applicants already fully paid for the services that were approved for discounts. The form was devised as a means of accommodating both service providers and applicants alike, in order for the applicants to recoup the discounts from the program. The

service provider merely acts as the conduit for receiving the payment and then forwarding that payment intended to reach the destination of the E-Rate applicant. It, therefore, is particularly egregious when service providers fail to comply with the BEAR form rules that compel them to remit the payments that they receive from the Administrator as the conduit for forwarding the payment to the E-Rate applicant.

Members of the CCSSO E-Rate coordinators working group are very familiar with the problems associated with applicants not receiving BEAR payments. In many cases, the school districts in these situations are small districts that are struggling to expand needed telecommunications and advanced services by using the E-Rate program.

In addition, in rare instances, applicants have been completely unable to obtain the discount reimbursement from the service provider because providers have gone bankrupt between the time they received the Administrator's check and when the check should have been sent to the applicant. Although there are cases across the nation, one of the first was in Pennsylvania, where the Lebanon School District, an 80% discount applicant with about 4200 students, lost more than \$130,000, or over 50% of the total amount of \$216,000 of discounts. There, the school district submitted three separate invoices to the Administrator through the BEAR process for A/K Computers. By the time that two of the three BEAR reimbursement checks had been mailed to the vendor, the company had filed for bankruptcy.

Repeated calls from Administrator attorneys and the school district's attorneys to resolve this issue were unsuccessful. On a positive note, the Good Samaritan Process recently implemented by the Administrator appears to enable the third reimbursement check to be paid ultimately to the school district, but only after months of delay. We are grateful that this process

was implemented and hope it will serve as a beneficial tool for other applicants in this unfortunate situation. But at the same time, this process would have been completely unnecessary had the BEAR check been sent directly to the intended recipient, the E-Rate applicant.

3. Applicants Should Be Permitted to Directly Receive BEAR Payments.

Had the BEAR reimbursement process allowed funding to be provided directly to the applicant, the Lebanon School District in south-central Pennsylvania and other similarly situated E-Rate applicants would not have to rely on service providers to remit the BEAR reimbursement checks that they receive from the Administrator to the E-Rate applicants. Instead, after extraordinary administrative effort on behalf of the applicant by both its staff and that of the Administrator, it will be receiving a small portion of that amount nearly four years after the services were rendered.

The most efficient way to accommodate the BEAR process is by implementing direct assignment to the applicant. This would reduce the time within which an applicant receives payment and the administrative burden on the service provider and the Administrator. It would reduce the administrative burden on the service provider by eliminating the need for the service provider to both deposit one check and send another check to the applicant. It would reduce the administrative burden on the Administrator by eliminating the need for the Administrator to shepherd the check delivery process on behalf of applicants.

There is simply no valid legal or policy reason to justify the current practice of prohibiting applicants from directly receiving BEAR checks.

a) Legal Analysis of Applicants' Receipt of BEAR Checks.

The development of the BEAR form was undertaken by the Administrator, with oversight and approval of the FCC and Office of Management and Budget ("OMB"). The BEAR form was originally developed to address those situations that arose frequently and regularly during the first funding year, and fell into three general categories. First, because of the pre-existing contract rule, which exempted contracts that were executed on or before July 1, 1997 from the competitive bidding process, some applicants already had been obliged to pay for telecommunications, Internet access and internal connections. Those applicants fully paid for those services using their funds. Second, and similarly, other applicants received funding commitment decisions letters well after the start of the first program year, and decided to commence the receipt of and concomitant payment for services under contracts in anticipation of receiving a favorable decision letter. Third, the majority of service providers had not been able to establish the billing systems necessary to apply discounts on applicant bills during the first funding year, and therefore, relied on the BEAR form as a means of providing discounts to their E-Rate customers.

Importantly, few if any of these situations were contemplated by the FCC in issuing its *First Report and Order* where it initially directed that service providers would provide discounts to applicants and seek reimbursement from the fund. The only mention of service provider reimbursement to applicants for services paid in full related to advance payment for multi-year contracts. *First Report and Order* at ¶544. The Commission clarified that only the current year's payments are eligible for discounts under E-Rate. Nonetheless, applicants may "use their own funds to pay full price for the portion of the contract exceeding one year (pro rata), and may

request that the service provider seek universal service support for the pro rata annual share of the pre-payment. The eligible school or library may also request that the service provider rebate the payments from the support mechanism that it receives in subsequent years to the school or library, to the extent that the school or library secures approval of discounts in subsequent years from the administrator.”

In fact, the *First Report and Order* made clear that service providers could not *mandate* applicants to fully pay for services and then seek reimbursement from the Administrator. *Id.* at ¶586. The Commission made clear that the discount methodology was adopted as a means of easing the administrative burden of E-Rate applicants and *not* because of any underlying legal requirement:

We conclude that requiring schools and libraries to pay in full could create serious cash flow problems for many schools and libraries and would disproportionately affect the most disadvantaged schools and libraries. For purposes of administrative ease, we conclude that service providers, rather than schools and libraries, should seek compensation from the universal service administrator. ... To require schools and libraries to seek direct reimbursement would also burden the administrator because of the large number of new entities that would be receiving funds.

Apparently, this language has been turned on its face and construed to prohibit E-Rate applicants from *voluntarily* electing to receive direct reimbursement through the BEAR form. Initially established as a means of assisting schools, the discount reimbursement mechanism has become extremely burdensome and denied outright reimbursements in those situations where the service provider has failed to comply with the BEAR form requirements.

Not even the *NPRM* itself offers a legal basis for determining that applicants are prohibited from directly receiving BEAR checks. The *NPRM* summarily states that “[u]nder

existing and Commission procedure, the Administrator of the universal service support mechanism does not provide funds directly to schools and libraries, but rather, provides funds to eligible service providers, who then offer discounted services to eligible schools and libraries.” *NPRM*, ¶33. The only substantive support is paragraphs 8 and 9 of the Commission’s October 8, 1999 Order at CC Docket Nos. 97-21 and 96-45, *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, FCC 99-291 (*reconsideration pending*). Like the *NPRM*, the October 1999 Order, however, is also completely lacking in any legal analysis. While section 254(h)(1)(B) prescribes that service providers shall provide discounts to schools and libraries, and shall either receive reimbursement of those discounts from the universal service mechanism or treat the discounts as an offset to their contributions to universal service, there statute is silent as to how to address those situations where the applicant has already paid for the service in full. There certainly is no statutory prohibition against allowing applicants to receive reimbursements directly from the universal service mechanism.

b) Policy Analysis of Applicants' Receipt of BEAR Checks.

Our above comments already explained the difficulties that applicants experience when they already paid in full for services on which discounts have been approved by the Administrator. Applicants have conveyed their frustrations to us time and again, and we repeatedly must explain that the current program procedures preclude applicants from directly receiving the BEAR checks. The point here is that the current BEAR process further delays applicants’ receipt of reimbursements of discounts, for no valid reason. If the program procedures were to be modified to permit applicants to directly receive BEAR reimbursement

checks, the workload of the Administrator and FCC would be decreased, thereby improving the efficiency of the program. The Administrator and FCC would no longer be required to seek compliance and undertake enforcement of the requirement for service providers to remit the BEAR payments to applicants.

Neither would program integrity and protections against fraud, waste and abuse be compromised by this proposal. The CCSSO does not envision that any of the other procedures associated with the BEAR form would have to be modified. Service providers should still be required to sign off on BEAR forms to verify that they provided the services and were paid for the services that are subject to the reimbursement request.

4. The BEAR Remittance Deadline Should Not Be Extended to 20 Days.

It is difficult for the CCSSO to understand why service providers need more than 10 days to simply deposit a check issued to them and reissue a check in the same amount to applicants. Alternatively, service providers can simply endorse the check over to the applicant. In addition, for an applicant depending on the E-Rate discount, 20 days is almost a three-week delay in payment after the BEAR Form has been processed by the Administrator. Perhaps a more reasonable timeframe would be 14 days, which would allow more than ample time for the BEAR check to be processed into the service provider's financial accounts and processed back to the applicant.

C. The FCC Should Consider Limiting Equipment Transfers to Every Three years, or Alternatively, Limit Applicant Requests for Discounts for the Same or Replacement Equipment Every Two Years.

In Paragraphs 33-36 of the *NPRM*, the Commission expresses concern that some recipients are replacing, on a yearly or almost-yearly basis, equipment obtained with universal

service discounts, and transferring that equipment to other schools or libraries that may not have been eligible for such equipment. According to Administrator documents, applicant demand for services at the 80 and 90 percent levels account for over 70 percent of funding demand. Also, examination of Priority 1 demand for Year 5 shows more demand in the 80 and 70 percent bands than at the 90 percent level, whereas funding demand for Priority 2 products at the 90 percent level dwarfs all other requests.

The CCSSO acknowledges the important contribution that the E-Rate has made to reaching the most disadvantaged schools, particularly those in the poorest urban districts. With E-Rate support, these districts have had access to technologies that now allow them to provide service to their classrooms. This is an important success of the E-Rate program. The Benton Foundation Report, *Great Expectations: Leveraging America's Investment in Educational Technology*, reports that large urban school districts have used E-Rate funds to build powerful telecommunications networks that rival or exceed those in more affluent suburban districts. Before the E-Rate, only two of Cleveland's 118 schools had Internet access. After three waves of E-Rate funding, the school system has built a web of high-speed connections that allows the transmission of voice, video and data to all schools and has every classroom wired, with the exception of rooms in a few older schools recently re-opened. (*Great Expectations*, page 18) In Milwaukee, the E-Rate program has taken the school district from only one-fifth of the district's 5,000 classrooms having Internet access to all schools connected through a district-wide network of high-speed lines and fiber-optic cable and 65% of all its classrooms connected by the spring of 2001. All classrooms are expected to be on-line by early 2003. (*Great Expectations*, page 19).

Unfortunately, however, many schools and libraries in more modest discount categories have not been as fortunate. In keeping with the recently confirmed national policy that no child should be left behind, these children in more modestly discounted schools should also be given the opportunity to enhance their learning experience.

The CCSSO offers its comments on the options identified by the FCC and submits another alternative for consideration:

1. Proposals Not Supported.

a) Limiting or Prohibiting Equipment Transfer.

The CCSSO does not favor prohibiting or limiting transfer of equipment for three years. This guideline interferes with state and local procurement rules.

b) Limiting Wiring Purchases.

The Commission also has proposed a limit specifically for wiring. CCSSO does not support a 10% limit on wiring as proposed because it does not address the issues the Commission intends to address at a broad policy level. The administrative burden of determining how much cabling represents 10% for a district could become overwhelming. Instead, the CCSSO has two diverse recommendations to address the problem.

2. Supported Proposals.

a) Every Other Year Discounts on Equipment.

First, the CCSSO supports the option of limiting applicants from requesting discounts on internal connections equipment for billed entities to once every other year. It is important to emphasize that this restriction should be site-specific, that is, applicable to each billed entity, and

should apply only to equipment. Maintenance services should be exempted from this restriction and continue to be eligible for annual discounts. While there is potential for frivolous requests when an applicant can receive services at steep discounts, it is important not to penalize truly needy applicants by disallowing maintenance support for the ongoing use of equipment they have purchased. In addition, school districts and other larger applicants that are choosing to develop infrastructure slowly and prudently should not be penalized by requiring them to purchase eligible equipment all in one year. The caveats mentioned above would prevent these unfortunate side effects of a blanket every two-year prohibition. This proposal continues to maintain competitive neutrality across the board.

This option would be simple to implement, as well, since all applications identify affected sites and the Administrator can electronically validate each site for which a discount has been requested. The computer system could block additional non-recurring requests every other year for each site making compliance automatic, just as the Administrator automatically denies or reduces application requests when they are partially ineligible. Thus, the issue would be resolved during the application process and would reduce the need for extensive post-disbursement auditing.

This option also reduces the heavy allocations to the highest discounted schools every year. This would allow funding to be available for Priority 2 services further below the current demarcation of 87 percent in subsequent years.

Finally, this option maintains the concept of competitive neutrality, presuming the Commission chooses to act on the issues raised previously in this document. More applicants will be able to consider using Priority 2 equipment when it is more cost effective.

b) Modifications to the Discount Matrix.

The FCC regulation at 47 C.F.R. §54.509 allows adjustment to the discount matrix. It states that if the Administrator believes subsequent years' demand would exceed available funds, the Administrator should recommend changes in the discount matrix to the Commission. To date, no changes in the matrix have been recommended. The same FCC regulation prohibits changing the discount rates for the two highest categories, where most of funding demand exists. The CCSSO recommends that the Commission consider options for adjusting the discount matrix to enable more applicants to receive funding for internal connections. One such approach is a separate framework for Priority 2 equipment where all applicants would receive a reduced discount for Priority 2 services. This reduction could range from a 20% to a 40% reduction in each applicant category. For example, under a 20% reduction scenario, a 90% applicant would receive a 90% discount for Priority 1 services and a 70% discount for Priority 2 services; an 80% applicant would receive an 80% discount on Priority 1 services and a 60% discount on Priority 2 services. Under a 40% reduction scenario, a 90% applicant would receive a 90% discount for Priority 1 services and a 50% discount for Priority 2 services; an 80% applicant would receive an 80% discount on Priority 1 services and a 40% discount on Priority 2 services. Subsequent bands would receive relative reductions for Priority 2 services.

This option would reduce the funding drain by simply allowing all applicants better access to Priority 2 equipment. Because applicants would be required to pay a higher amount for equipment they may not be inclined to purchase products that may be transferred to other sites. Second, with a lower discount, more applicants will be funded as additional funds previously earmarked for 90 percent applications would be committed to more applicants.

Disadvantages of this option are that there will be different discounts for different services. In addition, depending on the size of the discount reduction, highly disadvantaged applicants will receive a lower discount on those services and may not be able to afford their undiscounted share. Nonetheless, these concerns may be accommodated by providing applicants with sufficient advance notice of these modifications in the discount matrix, so that they may plan accordingly.

D. The Commission Should Codify The Alaska Waiver To Allow Ineligible Entities To Use Excess Services In Remote Areas.

In Paragraphs 37-43, the Commission entertained the notion that the *Alaska Order* allowing for the use of excess services in remote areas of Alaska could be expanded within the five criteria defined in the order as long as there were limitations to prevent fraud, waste and abuse in the E-Rate program.

CCSSO agrees that the FCC should consider allowing schools to share E-Rate eligible services at cost that are not being used during school hours. We also agree that such resource sharing should be pursued in such a way that the services are not misused in any way.

To provide for those assurances, one scenario could be to insist that resource sharing occurs only with organizations that serve the population served by the school. In this case, for schools, the parameters for the use of the services should be (1) the service base population for which a school is getting paid, including GED students, regular students, students who must access information from home and (2) use of the services fulfill requirements by the school district for those students' learning, i.e., the students are required to access the Internet to meet

the learning requirements. This framework would address the needs of community centers with after school programs and other not-for-profit educational programs particularly.

CCSSO does not believe that for-profit entities should have access to this service-sharing arrangement.

E. Appeals

1. The Commission Should Extend Appeals To 60 Days And Deem An Appeal Filed On The Date It Is Postmarked Instead Of The Date It Is Received.

The CCSSO strongly supports the Commission's willingness to entertain the appeal extension and the postmark date as the filing date. The appeals process is a legal step applicants are taking to resolve issues they feel were inadequately addressed by the Administrator.

However, most applicants are neither telecommunications nor legal experts and have been frustrated by the streamlined 30-day appeal window available to them. Applicants do not want to file frivolous appeals. On the other hand, without time to research the issue and understand the context in which a decision was made, it has been necessary to file appeals to maintain the applicants' rights.

In addition, since almost every other E-Rate deadline has been based on the postmarked date, such as the filing deadlines for the Form 470 and the Form 471, some applicants have been confused about the differing deadlines for appeals. The CCSSO greatly applauds the Commission's flexibility and willingness to incorporate these changes to assist applicants participating in a process mostly foreign to them.

2. The Manner for Funding Successful Appeals.

In Paragraphs 49-53 of the *NPRM*, the Commission requests comment on how successful appeals should be funded. Currently, a total aggregate sum is calculated and set aside to accommodate successful appeals. However, the Commission is concerned that “the prediction may underestimate the actual number of reversed decisions” which would make that sum inadequate. *NPRM*, ¶49. In addition, if the Commission changes the rules, what would be the most fair and equitable solution to accommodating successful appellants?

First, once successful E-Rate funding appeals have been deemed meritorious by the Administrator, the Commission or the American legal system, they should be funded immediately. Appeals are a mechanism for applicants to correct misunderstandings or mistakes in the processing and review of applications. The process also can clarify issues not considered in the Commission’s regulation or the Administrator’s policy. Successful appeals have led to significant changes and improvements in the program, including decisions regarding Copan, Tennessee, Iowa, Williamsburg-James City, Naperville and MasterMind to name a few.

Second, the CCSSO is concerned about the premise that the predicted sum would be insufficient. Theoretically, as the program matures, both the Administrator and applicants should become more familiar with the program parameters, thus, reducing the need for appeals. This would, again theoretically, reduce the funding necessary to accommodate successful appeals and, since the sum is presumably based on past experience, should be sufficient.

If the number of appeals does not decline, there are two possible issues that the Commission should address quickly. First, the high number of appeals may represent the fact that applications are not being reviewed properly. If this is the case, remedial action should be

swift. This situation is unfair to applicants and providers alike and, imposes a significant administrative burden on the Commission and the Administrator to resolve these issues, particularly on a case-by-case basis.

Second, the high number of appeals may represent the fact that applicants find the entire process inherently complex and ever-changing. This may be leading applicants to avail themselves of the appeals process to address issues that are unclear to them. In this instance, further streamlining and standardizing program rules would be most important.

As far as how to fund successful appeals, CCSSO believes this is a matter of program equity. Applicants should not be penalized for misunderstandings or mistakes committed by the program. Therefore, it is important for successful appeals to be funded immediately. Funds should be set aside for pending appeals during the funding year. Should successful appeal demand exceed the supply of set-aside funds, carryover funds from previous years should fund appeals. If carryover funds are exhausted or non-existent, any funds made available through the Form 500 process should be made available for successful appeals. Under no circumstances, however, should subsequent years funding be used for successful appeals. This outcome would cause further inequity by not only delaying the funding of meritorious appeals, but also by penalizing prospective E-Rate applicants in the next program year. Notably, although the program is now in its fourth year of operation, fortunately the situation has not been encountered where insufficient funds were set aside for funding appeals. If, however such a situation arises in the future, then the funding of successful appeals should be identified as a limited exception to the \$2.25 billion annual cap on funding commitments.

F. Enforcement Tools

1. Independent Audits

The Commission seeks comment on improving oversight capacity to guard against waste, fraud and abuse. Specifically, it seeks comment on a proposal requiring “independent audits of recipients and service providers at recipients’ and service providers’ expense, where the Administrator has reason to believe that potentially serious problems exist, or is directed by the Commission.” *NPRM*, ¶59.

While cognizant of the potential problems that can exist in such a large program, the CCSSO finds it peculiar that this method is being considered by the Commission. Currently, based on the General Accounting Office December 2000 report, the Administrator and the Commission have significantly increased their program oversight including the addition of two more internal auditors at the Universal Service Administrative Company, increased procedures and requirements on applicants regarding funding requests both at the application and invoicing levels, and refined program integrity assurance procedures. (*Letter from Andrew S. Fishel, Managing Director, Federal Communications Commission to the General Accounting Office, November 22, 2000 and Letter from Cheryl Parrino and Kate Moore, Chief Executive Officer and President, Schools and Libraries Division, Universal Service Administrative Company to the Federal Communications Commission to William Kennard, Chairman, Federal Communications Commission, November 22, 2000, on pages 59-66 of the GAO Report*). Subsequently, the Federal Communications Commission’s Office of Inspector General initiated an undisclosed number of audits of applicants and service providers.

Furthermore, in the Independent Public Accountants' Report on Applying Agreed-Upon Procedures for Year 1, 17 applicants were audited by Arthur Andersen. A few smaller applicants were audited by internal Administrator personnel. Some audit findings will result in commitment adjustments. As time goes on, the Administrator has stated, there will be increased audits.

These post-commitment audits are obviously and by no means a substitute for the extensive pre-commitment reviews that the Administrator performs. Applicants provide substantial documentation to support their applications. There already are two opportunities for the Administrator to question and verify the accuracy of the information provided: First, during the application process and, second, during the invoicing process. Based on the experience of CCSSO State E-Rate Coordinators Working Group, it is rare that Administrator finds applicants recalcitrant in providing additional information. The bottom line is that there are already sufficient resources available to the FCC and Administrator for performing pre-commitments review and post-commitment audits. It is unfair and unnecessary to require applicants to fund audits at the direction of the Administrator or FCC. The CCSSO is not aware of any such requirement that is applicable to beneficiaries of any of the other universal service support mechanisms. Likewise, no such analogous requirement is evident in funding programs that are administered by the U.S. Department of Education where funds are disbursed to school districts. Further, it is impossible for school districts to budget for such unanticipated expenditures and would create a further resource drain on technology budgets. It would be particularly unjust and unfair in those situations where the audit concluded that the applicant was in compliance with the E-Rate program rules.

In light of the extensive expense most schools and libraries incur in applying for the E-Rate, CCSSO cannot support independent audits of applicants and service providers at their expense. Rather, the Commission and the Administrator should, instead, continue to focus on accurate data collection and evaluation to determine the most important issues about which the program requires better education or re-definition so that it can focus its efforts and educate the constituencies regarding these issues more thoroughly. At that point, the limited resources available to the Administrator and the Commission could be more appropriately targeted for limited audits that can be accommodated by the joint resources of the various auditing components of the Administrator and the Commission that are currently interested in doing so.

2. Prohibitions on Participation

In Paragraphs 60-62 of the *NPRM*, the Commission notes that current program rules do not allow the Commission to bar entities that willfully and repeatedly fail to comply with program rules from participating in the program for periods of time. The Commission asks whether such rules will further improve oversight of the E-Rate program.

The CCSSO state E-Rate coordinators have often expressed their dismay regarding the activities of unscrupulous applicants and service providers and welcome additional rules that would give the Commission more authority to sanction those that willfully and repeatedly fail to comply with statutory and regulatory requirements. However, this process may continue to be long and cumbersome as the Commission attempts to verify the abuse and defend its decision.

As an additional means of monitoring applicant and service provider compliance with rules, the Commission may want to consider establishing on the Administrator's website a

section similar to that of the Better Business Bureau and the Federal Aviation Administration that allows the public to view comments that have been filed with the agency. This may provide a faster way to address some of the issues that have been occurring, reduce the administrative burden on the Administrator and the Commission and allow applicants and service providers who are playing by the rules to make their own decisions about potential collaborators and consultants long before the Commission can reasonably act.

G. Unused Funds

1. General Overview

In Paragraphs 59-62 of the *NPRM*, the Commission describes the current funding commitment process and explains that a significant amount of committed funds remain unspent, 18% from the first year (*NPRM*, ¶60) and approximately 29% from the second year as of June 30, 2001. The Commission requests suggestions for administrative modifications that would improve program operation, ensure a fair and equitable distribution of funds, or guard against waste, fraud and abuse.

The CCSSO offers a number of program improvements that would increase participation, streamline program administration but guard against waste, fraud and abuse. The recommendations below are grouped into procedural changes that affect the Administrator's process and changes that affect the application process.

a) Changes Affecting the Administrator's Process.

(1) Complete Funding Commitments Before Funding Year Begins.

This change would significantly increase applicants' ability to rely on E-Rate funds. However, this does not mean that the application date should be earlier. It is important that the funding cycle become as close to the budgeting cycle as possible. This improvement would not require a rule change, and the Administrator appears to be headed in this direction. Likewise, the Administrator and FCC should strive to resolve appeals as expeditiously as possible.

(2) Extend Non-Recurring Cost Commitments For 18 Months.

Particularly if funding commitments continue to occur after the funding year has begun, it is important to accommodate delayed installation. This improvement would require a rule

(3) Provide Better Access to Program Data.

Currently, it is difficult to obtain meaningful data from the Administrator on a regular basis. However, ongoing support for the program is dependent on a reasonable understanding of how the program affects applicants. In addition, should circumstances change such that all of the stated Commission goals are met, it would be important for applicants and service providers alike to comment and recommend refinements to the program. In order to better understand the impact of the E-Rate program, the U. S. Department of Education commissioned a study of the E-Rate entitled *E-Rate and the Digital Divide: A Preliminary Analysis From the Integrated Studies of Educational Technology* (prepared by the Urban Institute, US Dept. of Education Document # 00-17, 2000). This study evaluated the effects of the E-Rate program during its first two years. However, ongoing analysis of this information as well as the contribution amounts by telecommunications carrier, state and funding year are also important to discern the appropriate use of funds in the program over time. The CCSSO is happy to work with the Commission and

the Administrator to implement these ongoing data collection activities. This improvement would not require a rule change.

b) Changes Affecting the Application Process

(1) Allow Applicants Access to Previous Year's Forms.

Often applicants are applying for the same services each year for the same set of eligible entities. In order to streamline the process for both applicants and Administrator's staff, a simple change of allowing applicants to update their forms from previous years would reduce the administrative burden for the applicant and the Administrator. In addition, another field could be inserted to the on-line process so that an application field that was identical to a previous year's application could be flagged as a duplicate. Since an approved form from previous years would have already passed minimum processing standards, this would simplify the process significantly. Because the funding process pools applications and does not use a first-come, first-served allocation, these applications would not be favored in the funding allocation process. This improvement would not require a rule change.

(2) Eliminate or Reform the Form 470 Competitive Bidding Process Requirements.

According to the Administrator, the primary reason for funding denials is applicants' inability to comply with the E-Rate Program's competitive bidding requirements, particularly the 28-day window. This information was shared during training sessions that the Administrator conducted. The CCSSO recommends that the Commission reconsider the value of the Form 470. When the program was implemented there was a presumption of a "growing competitive marketplace" of which schools and libraries were expected to avail themselves. (*First Report and Order*, ¶575) In addition, to further expand the reach of competition beyond local

competitors, the Commission required that an application describing the school or library's technology needs should be posted on a website maintained by the program administrator. *Id.* at ¶576; 47 C.F.R. §54.511. In addition, the Commission believed that in order to provide access to any potential bidder, requests should be posted on the website at least 28 days. *Id.* at ¶579)

However applicant experience with this process has been dismal. First, in remote rural areas, applicants rarely have received response from additional bidders interested in offering services. Second, in urban areas, large applicants have been inundated with advertisements and marketing materials not relevant to the particular request. Worst of all, many smaller applicants have not received any response to the posting, even from the only provider eligible to provide service, the local telecommunications carrier. This has caused applicants to view the Form 470 as merely a stumbling block to service rather than an opportunity for broader access to relevant and competitive services.

The CCSSO, therefore, offers two solutions to this problem. First, eliminate the Form 470 altogether. While the theory of the form and process may have made sense when the program began, it has not accomplished its goal and has stymied applicants instead. In this scenario, the applicant could self-certify in Item 25 that it has conformed to its relevant state and local procurement rules, just as it self-certifies to many other items. The class of applicants for whom this solution may not be relevant is non-public schools. However, this class is a significantly small proportion of the total program applicant pool. We submit it is inherently unfair to hold the rest of the applicants hostage to the idiosyncrasies of this smaller class of applicant.

Second, the CCSSO offers a middle ground: Allow notification of all potential bidders while eliminating some of burdensome aspects of the Form 470. First, eliminate the 28-day mandatory waiting period and instead use current state and local procurement rules to govern competitive bidding processes. Second, simplify the Form 470 so that is it merely a public notice of intent, which most school districts must employ already. This form could be updated annually using the name of the applicant, a contact person and preferred contact format. This would streamline the application and review process while maintaining fair and equitable access for all service providers. Because this would be a reform, not an elimination of the Form 470, this improvement would not require a rule change.

(3) Eliminate Block 3 on the Form 471.

Block 3 of the Form 471, the Schools and Libraries Universal Service Services Ordered and Certification Form, provides misleading information. It is our understanding that this Block was supposed to provide a rough understanding of the impact a certain application would have on improving the connectivity of schools and libraries. However, because schools and libraries are represented on more than one Form 471, Block 3 has the potential to at least double count numbers of students and library patrons served. In addition, it is unclear how this information has ever been used. In order to simplify the application process and reduce the misinformation that may result, CCSSO recommends eliminating Block 3 from the application process.

(4) Establish A Mid-Point Cost Estimation Standard Or +/- 10%.

As noted below, one of the reasons for unspent funds is estimation procedures. To reduce the effect of this phenomenon, applicants should be allowed to estimate costs with some factor that allows for potential over estimation and underestimation. This could reduce demand

on the fund and could be factored into the Administrator's funding commitment calculations.

This improvement would not require a rule change.

(5) Offer Applicants The Choice Of Reducing The Administrative Burden Of The Form 486.

According to the Administrator, "the Form 486 informs the Fund Administrator, the Schools and Libraries Division of the Universal Service Company, when the Billed Entity and/or eligible entities that it represents is receiving, is scheduled to receive, or has received service in the relevant Funding Year from the named Service Provider (s). Receipt by the Administrator of a properly completed Form 486 triggers the process for Administrator to receive invoices."

(Administrator Form 486 Instructions, July 2001) There may be cases where the applicant continues to need the protection that the Form 486 affords. However, there are many services applicants receive regularly for which this additional step is merely a burden.

Therefore, the CCSSO recommends that the Administrator offer applicants the option of completing the requirements of the Form 486, including the Children's Internet Protection Act (CIPA) compliance, on the Form 471. These could be included as specific check boxes next to each described service in Block 5 and CIPA certification could be included in a format similar to the technology plan certification. This change would simplify the application process while maintaining program integrity regarding CIPA compliance and appropriate utilization of services. This improvement was unanimously proposed and supported by the SLD Year 3 Task Force and would not require a rule change.

(6) Allow Applicants To Split Funding Request Numbers ("FRNs") In Certain Situations.

In many instances, applicants find that there is a need to change the funding requests and commitments to address the common problems caused by applying for a program six to nine months in advance of using the services. In the application process, applicants often are called by the Administrator to adjust funding commitments based on review that reveals incorrect requests for funding. After funding commitments are issued, there are additional issues of service providers going out of business or merging that change the service delivery mechanisms. By allowing applicants to split FRNs in such circumstances, applicants could retain funding for which they are requesting a discount and comply more swiftly with program rules without losing funds. This would not require a rule change but rather an adjustment to the Administrator's procedures.

H. Reduction of Committed Funds That Are Not Used By Applicants.

In Paragraphs 63 and 64 of the *NPRM*, the Commission outlines the new process to address program resource under-utilization that will allow the Administrator to estimate potential commitments that will exceed the funding level of \$2.25 billion so that historical funding disbursement shortfalls will diminish. The Commission expresses interest in why applicants and providers may fail to fully use committed funds and whether it is necessary to adopt procedures to address a situation in which more funds are committed and used than are available for disbursement.

The CCSSO agrees that there is a significant amount of funding that remains unspent in the E-Rate program. A large part of this under-utilization relates to the disjointed cycles of the E-Rate process and the school district and state budgeting process. In most cases, states and school districts, while operating on the same funding cycle as the E-Rate, cannot make final

funding decisions until after the state legislature has completed its budgeting process, typically April or May of the same year. The E-Rate requires contracts and agreements to be in place by January of that year. Therefore, in order to maximize discount possibilities, some applicants apply for services they can afford, presuming certain budgetary possibilities, but choose to reduce services when budgetary limitations are finally realized.

Secondly, some services, particularly usage-sensitive long distance and Internet services must be estimated since usage varies month to month. Again, in order to utilize fully E-Rate discounts, those estimates must presume maximum possible usage.

Thirdly, E-Rate funds have historically been allocated after the program funding year has begun. Due to the insecure nature of E-Rate funding when projects have begun and funding commitment have not been announced, E-Rate funds have been disregarded as a reliable funding source.

Fourth, because E-Rate funding commitments have traditionally occurred after the program funding year has begun, many projects are delayed due to lack of funds. In the case where a project has recurring and non-recurring costs, implementation is dependent on when the non-recurring costs are incurred. When they are delayed, recurring costs associated with the project may be less than anticipated because the project life during the funding year is shorter than estimated, perhaps 6 months instead of 12 months, for example.

Finally, staff turnover and program complexity can cause some applicants to simply leave the process at some point during a program year. In these cases, the cost of educating a new staff person to reach a competent level of involvement can significantly outweigh any benefit. The risk of potential misunderstandings that could occur too is high.

While some of these issues are inevitable, CCSSO applauds the Commission and the Administrator's efforts to create a process by which these funds will be available to applicants. The Form 500 allowing applicants to notify the Administrator of unusable funding commitments will reduce the amount of funding that is left unspent.

I. Treatment of Unused Funds

In Paragraphs 65 and 66, the Commission reiterates its rules governing unused funding authority and asks for comments on how unused funds should be treated: either credited back to service providers or distributing them in subsequent years. In this case, the CCSSO believes Commissioner Copps' position on this issue is entirely accurate. "In each year, the Administrator of the E-Rate program collects funds up to the cap to meet demand. Yet, although initial estimates were that demand would not exceed the cap for nearly a decade, the program has been so successful that since the first year, requests from our nation's schools and libraries have exceeded the available funding. All funds, however, are not disbursed for a variety of administrative reasons or because individual schools and libraries do not fully use the money committed to them. Our rules were designed to ensure that funds would be used for their intended purpose or returned *so that other deserving schools could benefit*" (emphasis added).

Since demand consistently outstrips available funding, it is not appropriate to offset collections with unspent E-Rate funds to the telecommunications carriers. In addition, the CCSSO finds it hard to reconcile the Commission's concerns about fully funding successful appeals given the funding scenario defined here. If a series of funds are consistently unused, those funds should be available for the appeals.

If, however, the Commission has been offsetting the monies telecommunications carriers collect from their users with unused monies in the Universal Service Fund, the CCSSO believes that those monies should be returned to the Universal Service Fund to meet the demand for that funding year and subsequent years.

J. Support for Administrative Assistance by State Agencies

As mentioned in the Introduction, many state agencies offer significant support for applicants throughout the E-Rate application process. In an informal survey of states, an average of about \$330,000 annually is spent by state agency supporting its state applicants. Among the services state agencies provide are the following:

- ◆ Review and approval of technology plans;
- ◆ Standardized format for reported National School Lunch Program percentages by school;
- ◆ Ongoing guidance for applicants through the application process;
- ◆ Alerting the Administrator to problems experienced in the field with interpretations and on-line functionality;

These services vary by state, but there are consistent duties that fall on every state educational agency. We believe that additional thought should be given to recognizing the contributions of these organizations. To that end, CCSSO encourages discussion among the Commission, applicants and state agencies to consider how such support should take place. Some proposals the Commission could consider include:

- ◆ Paying for expenses to the annual Train-the-Trainers meeting;
- ◆ Off-setting the costs of reviewing and approving technology plans;

- ◆ Creating a pool from which state agencies could draw funds for training sessions in their state;
- ◆ Offering an administrative stipend to each state for the services they provide to their schools and to the SLD in support of the program.

K. Alternative Disbursement Mechanisms.

While some parties may be comfortable with the current E-Rate disbursement mechanism, there are others who believe there may be a more effective and efficient mechanism to assure schools receive appropriate support. Additional thought should be given to reconsidering alternative disbursement mechanisms. The analysis should include the costs and benefits of the current system and any alternatives to assure that the current mechanism is the most appropriate, or that another more direct and equitable mechanism would be more effective in streamlining the program and promoting equity among applicants. Some proposals the Commission could consider include:

- ◆ Alternative discount matrices and changes to the urban / rural designations;
- ◆ State allocations by pupil, applicant number, poverty level and other standard measures of population and need, including those used by other technology programs with similar goals;

We believe that after five years of experience, the Commission needs to review this important aspect of the program. Clearly, this change would be significant and as such it should not happen quickly, nor without the necessary considerations of keeping all existing participants in the Program. As a starting point, the Commission can refer back to testimony in its May 7, 1997 Universal Service Report and Order -- FCC 97-157 (pp.515-518) to guide the direction of

a follow-on NPRM specifically on this issue. Therefore, we respectfully ask that the Commission direct parties in a separate proceeding to develop a record on which to review the current funding disbursement system. The CCSSO stands committed to assisting in this important task.

IV. CONCLUSION

The CCSSO reiterates its deep appreciation for the support the Commission has provided to the Universal Service Support Mechanism for Schools and Libraries. The Commission has provided and continues to provide extraordinary leadership during very difficult times. We stand ready to assist the Commission on these and other issues as the program moves forward.

COUNCIL OF CHIEF STATE SCHOOL OFFICERS

By: 

G. Thomas Houlihan, Executive Director
One Massachusetts Avenue, N.W., Suite 700
Washington, DC 20001
(202) 326-8688

Certificate of Service

I hereby certify that I have served a copy of the foregoing document, Initial Comments of the Council of Chief State School Officers, on the following persons by depositing a copy in the United States Mail, first class postage prepaid:

U.S. First Class Mail:

Michael K. Powell, Chairman
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Kathleen Q. Abernathy, Commissioner
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Michael J. Copps, Commissioner
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Kevin J. Martin, Commissioner
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Bob Rowe, Commissioner
Montana Public Service Commission
1701 Prospect Avenue
P.O. Box 202601
Helena, MT 59620-2601

G. Nanette Thompson, Chair
Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, AK 99501-3469

Thomas J. Dunleavy, Commissioner
New York State Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

Lila A. Jaber, Chairman
Florida Public Service Commission
2540 Shumard Oak Boulevard
Gerald Gunter Building
Tallahassee, FL 32399-0850

Katherine L. Schroeder
Division Chief
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 Twelfth Street, N.W.
Washington, DC 20554

Eric N. Einhorn
Deputy Division Chief
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 Twelfth Street, N.W.
Washington, DC 20554

Mark G. Seifert
Deputy Division Chief
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 Twelfth Street, N.W.
Washington, DC 20554

Cheryl Callahan
Assistant Division Chief
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 Twelfth Street, N.W.
Washington, DC 20554

William Scher
Assistant Division Chief
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 Twelfth Street, N.W.
Washington, DC 20554

Lorraine Kenyon, Common Carrier Specialist
Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, AL 99501-3469

Gregory Fogleman
Florida Public Service Commission
2540 Shumard Oak Boulevard
Gerald Gunter Building
Tallahassee, FL 32399-0850

Charles Bolle, Policy Advisor
Nevada Public Utilities Commission
1150 East William Street
Carson City, NV 89701-3109

Sharon L. Webber
Deputy Division Chief
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 Twelfth Street, N.W.
Washington, DC 20554

Anita Cheng
Assistant Division Chief
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 Twelfth Street, N.W.
Washington, DC 20554

Carl Johnson
New York State Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

Joel Shifman
Maine Public Utilities Commission
242 State Street
State House Station 18
Augusta, ME 04333-0018

James Bradford Ramsay, General Counsel
National Association of Regulatory
Utility Commissioners
1101 Vermont Avenue, N.W., Suite 200
Washington, DC 20005

Tom Wilson
Washington Utilities and Transportation
Commission
Chandler Plaza Building
Post Office Box 47250
Olympia, WA 98504-7250

Mary E. Newmeyer, Utility Rate Supervisor
Alabama Public Service Commission
100 North Union Street, Suite 800
Montgomery, AL 36130

Larry Stevens
Iowa Utilities Board
350 Maple Street
Des Moines, IA 50319-0069

Jeff Pursley
Nebraska Public Service Commission
300 The Atrium
1200 N. Street
Lincoln, NE 68509-4927

Michael Lee, Bureau Chief
Rate Design and Economics
Montana Public Service Commission
1701 Prospect Avenue
P.O. Box 202601
Helena, MT 59620-2601

Nancy Zearfoss
Maryland Public Service Commission
6 St. Paul Street, 16th Floor
Baltimore, MD 21202-6806

Peter Blumn
Vermont Public Service Board
112 State Street, 4th Floor
Montpelier, VT 05620-2701

Peter A. Pescosolido
Connecticut Department of Public
Utility Control
10 Franklin Square
New Britain, CT 06051

David Dowds
Florida Public Service Commission
2540 Shumard Oak Boulevard
Gerald Gunter Building
Tallahassee, FL 32399-0850

Jennifer Gilmore
Indiana Utility Regulatory Commission
Indiana Government Center South
302 West Washington Street, Suite E306
Indianapolis, IN 46204

/s/ Debra M. Kriete
Debra M. Kriete, Esq.

Dated: April 5, 2002